

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 420 of 1996

For Approval and Signature:**HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to civil judge ?

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STATE OF GUJARAT - Appellant(s)*Versus***JORAJI TAKHAJI THAKOR - Opponent(s)**

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Appearance :

MR PRADIP D BHATE APP for Appellant

MR PREMAL R JOSHI for Opponent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**Date : 21/07/2006****ORAL JUDGMENT***Heard* the learned advocates.*This* is an Appeal preferred by the prosecution

under Section 378 CrPC against the order of acquittal recorded by the learned Judicial Magistrate, First Class, Deesa in Criminal Case No. 1067 of 1992.

The sample of milk [*cow and buffalo mix milk*] collected by the Food Inspector from the accused Joraji Takhaji Thakore on 5th February, 1992 was found to be adulterated. The report of the Public Analyst [*Exh. 31*] suggests that the said milk sample contained 6.6% non-fat milk solids. The required quantity of non-fat milk solids provided under paragraph A.11.01.01 of Appendix-B to the Prevention of Food Adulteration Act, 1954 is 8.5%. *Thus*, the non-fat milk solids found in the sample milk was nearly 25% less than the required minimum.

Pursuant to the said report, after receiving sanction from the Public Health authority, the Food Inspector lodged complaint against the accused for the offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as, "***the Act of 1954***"]. The same was registered as Criminal Case No. 1067 of 1992. The accused was tried *summarily*. The learned Magistrate, by *impugned* judgment and order, recorded

that there was a marginal difference of 1.9% in the non-fat milk solids. It was further held that the prosecution had made out a *prima facie* case for breach of Section 7 of the Act of 1954. However, the guilt was not proved to the hilt. The learned Magistrate further held that it was a border line case and there was no report of adulteration of milk by adding water. The accused was, therefore, acquitted as envisaged by Section 255 (1) CrPC by giving benefit of doubt. Therefore, the present Appeal.

Before the learned Magistrate, the accused agreed that the milk sample was collected in consonance with law. He did not dispute the report of the Public Analyst either.

Mr. Bhate, learned APP has assailed the judgment of the learned Magistrate and has submitted that the learned Magistrate has committed grave error in acquitting the accused.

Mr. Joshi has supported the *impugned* judgment and order of the learned Magistrate. He has submitted that the Public Analyst failed to carry out freezing

test to ascertain adulteration of the milk sample by addition of water. He has submitted that there was a marginal difference in the non-fat milk solids present in the sample milk. For such marginal difference, the accused has rightly been given the benefit of doubt. In support thereof, he has relied upon the judgments of this Court in the matters of ***State v. Bhagubhai Ramjibhai*** [1982 (2) GLR 625]; of ***P.C Trivedi v. Gajaraben Chandulal & Anr.*** [2003 (3) 1876] and of ***State of Gujarat vs. Vadilal Popatlal Mehta*** [2005 (3) GLH 538].

It is true that in the aforesaid judgments, this Court has approved the acquittal on the ground of marginal difference of 1 or 2 *per cent* in the non fat milk solids contents. In the present case also, the learned Magistrate has observed that there was a marginal difference in the contents of non-fat milk solids of about 1.9%. I am, however, unable to agree with the said observation made by the learned Magistrate. It should be noted that the law requires that a milk sample should contain minimum 8.5% non-fat milk solids. In the present case, it shows difference of 1.9% which works out to nearly 25% less

than the required minimum. Such a difference cannot be said to be marginal difference as has been submitted by Mr. Joshi. In my opinion, the learned Magistrate has erred in holding that it was a case of marginal difference. Further, the learned Magistrate has observed that the extent of non-fat milk solids would depend upon the area, nature of food, etc. I am of the opinion that the learned Magistrate has entered into irrelevant inquiries by referring to the area or the nature of food given to the cattle. The standards prescribed in the Act of 1954 has taken care of the relevant considerations like area. The only inquiry which was required to be made by the learned Magistrate was whether the sample was conforming with the standards prescribed in the Act of 1954 or not. In my view, the learned Magistrate has erred in taking into consideration the irrelevant materials and in holding that the difference was marginal.

For the aforesaid reasons, the Appeal is allowed. The *impugned* judgment and order dated 27th July, 1995 passed by the learned Judicial Magistrate, First Class, Deesa in Criminal Case No. 1067 of 1992

is *quashed* and *set-aside*. Criminal Case No. 1067 of 1992 is remanded to the learned Judicial Magistrate, First Class, Deesa for re-trial and decision in accordance with law. R & P be returned to the trial Court *forthwith*.

{Miss R.M Doshit, J.}

*Prakash**